support of Ballard v. Searls. In that case the facts were essentially the same as those of Sewell v. Johnson. Without discussing the question of judicial notice, the court took into account the fact that there was no longer a judgment to support the creditor's bill and remanded the case to the Circuit Court for relief appropriate to the new state of facts. The cases cited by counsel were directed to the point that the court should dismiss a moot question.[12] In the federal cases following Ballard v. Searls, however, the court definitely said it was taking judicial notice of the reversal of the original judgment, when the reversal occurred pending an appeal.

If the authority of federal precedents is accepted for a modification of the general rule as to judicial notice, it is to be noted that the federal rule apparently differs from that of California. Although judicial notice will not be taken of the records of other federal courts[13] nor of the courts of the state in which they exercise jurisdiction,[14] judicial notice may be taken of their own records in other cases.[15]

Whether characterized as judicial notice or not, the principle adopted by the court in the principal case may well be applied in cases where there is no opportunity to plead the judgment and the facts noticed in the judgment are not subject to rebuttal. It is only reasonable that the court avoid cumbersome procedure, if not the doing of an injustice, by an immediate recognition of the fact that the case before it is no longer entitled to consideration. But the enlargement of the rule should be kept strictly within the limits suggested by the principal case.[16]

C. S. J.

Exemptions: Dissolution of Liens on Exempt Property by Bankruptcy.—The Supreme Court of the United States has recently decided, in the case of Chicago, Burlington & Quincy Rd. Co. v. Hall,[1] that section 67f of the Bankruptcy Act has the effect of dissolving a lien obtained through legal proceedings within the four months' period, even on property which is set apart to the bankrupt as exempt under other provisions of the Act.

In this case it appeared that the bankrupt, a resident of Nebraska, had been sued in Iowa, and his wages attached. Under the Nebraska

---

[12] Dakota County v. Glidden, (1884) 113 U. S. 222 (compromise); Smith v. U. S., (1876) 94 U. S. 97 (The defendant had escaped); San Mateo County v. S. P. Ry., (1885) 116 U. S. 141 (Compromise); Cheong Ah Moy v. U. S., (1884) 113 U. S. 216 (Habeas corpus for person already deported).

[13] 16 Cyc 919.

[14] 16 Cyc 920.

[15] In re Osborn, (1902) 115 Fed. 1; Cushman Paper Box Mach. Co. v. Goddard, (1899) 95 Fed. 664; Pitkins v. Cowen, (1899) 91 Fed. 199; Pittel v. Fidelity Ins. Co., (1898) 86 Fed. 225; In re Durrant, (1898) 84 Fed. 314; Louisville Trust Co. v. Cincinnati, (1896) 76 Fed. 296, 318; The Minna, (1863) 17 Fed. Cases No. 9634; In re Boardman, (1897) 169 U. S. 39.

[16] Wigmore on Evid. sec. 2565, sec 2579; People v. Lichtenstein, (Aug. 27, 1913) 17 Cal. App. Dec. 187, 203.

[1] 33 Sup. Ct. Rep. 885. (Decided June 9, 1913.)

statute, these wages were exempt; and within four months after the levy, a petition in bankruptcy was filed, and in these proceedings the wages were set apart as exempt. The bankrupt then sued the employer for the wages, and the garnishment was held no defense, on the ground that it had been dissolved by the bankruptcy proceedings.

The decision is of interest not merely because it settles a question of interpretation of the Act, upon which the courts have divided, but particularly because of the broad basis adopted by the court for the interpretation reached. As a mere matter of literal construction, the meaning of section 67f was open to considerable doubt in connection with exempt property; for despite its general language,[2] it declares that "the property affected by the levy * * * * shall pass to the trustee as a part of the estate of the bankrupt." Many of the courts had based on this provision the reasoning that Congress must have intended a dissolution of liens only in cases where, in the absence of such a lien, the title to the property would pass to the trustee for distribution among the creditors. It is settled that no title to exempt property passes to the trustee;[3] and in several cases in both the State and Federal courts it had therefore been held that liens on exempt property were unaffected by this section.[4] It hardly gives the quoted provision its full literal effect to answer, as does the opinion of the Supreme Court, that even exempt property may "pass to the trustee," because under certain circumstances it may be necessary for him to temporarily take possession before it be set aside as exempt.

Moreover, the argument, suggested in the opinion, that the dissolution of liens on exempt property is necessary to attain the purpose of the Act to forbid preferences, or any advantage gained by one creditor over another, would not seem to be conclusive: because the opinion expressly recognizes and re-affirms the rule of Lockwood v. Exchange Bank,[5] where it was held that if the debtor had waived his exemption in favor of a particular creditor, that creditor might reap the benefit of the debtor's favor without complaint from the other creditors. If the principle of equality of distribution did not forbid this interpretation where there had been a waiver, it would not seem to prevent a literal interpretation where the waiver was absent.

---

[2] "All * * * liens obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt."

[3] Lockwood v. Exchange Bank, (1903) 190 U. S. 294, 47 L. ed. 1061.

[4] Morris v. Covey, (1912) 148 S. W. 257 (Ky.); First National Bank v. Bartlett, (1908) 35 Pa. Super. Ct. 593, 21 Am. Bank Rep. 88. Re Driggs, (1909) 171 Fed. 897; Re Durham, (1900) 104 Fed. 231.

[5] (1903) 190 U. S. 294, 47 L. ed. 1061.

But the real basis of the decision, and its chief interest and value, are to be found in the principle that in this as well as in other cases arising under the Act, it is to be interpreted in the light of its purpose to secure to the unfortunate debtor freedom from the demands of his creditors, upon condition of his surrender of his non-exempt property. Clearly this purpose is to be considered in determining the right to a discharge, and in voluntary bankruptcies; but the novel feature of the decision is its application to the matter of the dissolution of liens. Under the law as thus settled, this dissolution inures to the benefit of the bankrupt as well as the unsecured creditors. As already stated, the question had been a disputed one, the view now established having been foreshadowed in an able opinion of Judge Jones in Re Tune,[6] which had been followed by the Circuit Court of Appeals for the Ninth Circuit in Re Forbes.[7]

M. E. H.

Fraudulent Purchase of Pledge by Pledgee at his own Sale.—The case of Cushing v. The Building Association of the Society of the New or Practical Psychology[1] decided by the Supreme Court of California affords a good illustration of the modern attitude of the law as to the pledgee's rights in the pledged property. It was there held that where a pledgee fraudulently sells the pledge before the pledgor's default and buys it in at his own sale, he does not thereby forfeit his property in the pledge, but that the contract of pledge remains unaffected, unless the pledgor or his assigns see fit to treat the attempted sale as a valid one.

In reaching this conclusion the court followed the analogy of the case of a wrongful sale by the pledgee to the third person, in which case it has been held that the transferee at least acquires the rights of the original pledgee, and that the pledgor or his successor must satisfy the obligation of the pledge before he is entitled to regain the property.[2] There is another line of reasoning, not suggested by the court, which might apply in this case. There is a line of cases holding that a purchase by a pledgee at his own sale, in good faith, is not void but voidable at the election of the pledgor —and if the latter elects to avoid the sale, there is no conversion by the pledgee where no change has occurred in the actual condition or situation of the property. The relation of the parties remains the same as before the attempted sale, the pledgee continuing to hold under the contract of pledge. But the sale must either be accepted or rejected in its entirety. When it is rejected and the pledgee remains in possession and control of the property with ability to perform his contract by restoring the pledge to the pledgor

---

[6] (1902) 115 Fed. 906.
[7] (1911) 186 Fed. 79.
[1] Cushing v. Building Association, (1913) 46 Cal. Decs. 69.
[2] Williams v. Ashe, (1896) 111 Cal. 180; Brittain v. Oakland Bank of Savings, (1899) 124 Cal., 282; Talty v. Freedman's Savings and Trust Co., (1876) 93 U. S. 321; Belden v. Perkins, (1875) 78 Ill. 449.